

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-12-1-5-00023-17<sup>1</sup>  
**Petitioner:** Joseph E. Gogolak  
**Respondent:** Lake County Assessor  
**Parcels:** 45-05-33-228-017.000-004  
**Assessment Year:** 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated this appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on February 14, 2013. The PTABOA failed to hold a hearing within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed a Form 131 petition directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on September 21, 2017.<sup>2</sup> Neither the ALJ nor the Board inspected the property.
4. Joseph E. Gogolak, Petitioner, was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

**Facts**

5. The subject property consists of vacant residential land located at 1121 Warrick Street in Gary.
6. The assessed value as listed by Petitioner on the Form 131 is \$64,000.

---

<sup>1</sup> An additional petition, Petition 45-004-12-1-5-00024-17, was also originally a subject of this hearing. Due to a technical procedural issue, the Board is not issuing a determination with regard to that petition at this time. Instead, the Board is issuing a separate order about how that matter will proceed.

<sup>2</sup> This Petition was actually scheduled for hearing on September 11, 2017. When Petitioner received his notice, along with the notice for Petition 45-004-12-1-5-00024-17, he did not see there were two different hearing dates on the notices. Petitioner did not appear for the September 11, 2017, hearing. The Board offered to reschedule that hearing but the parties elected to proceed with both appeals on September 21, 2017, rather than reschedule.

7. Petitioner requested an assessed value of \$12,600.

### **Record**

8. The official record contains the following:

- a. A digital recording of the hearing
- b. Exhibits:

Respondent Exhibit R-1:	Real Property Maintenance Report,
Petitioner Exhibit 1:	Appraisal by Loray T. Robinson,
Petitioner Exhibit 2:	Board decision for Pet. 45-041-02-1-5-00227,
Petitioner Exhibit 3:	Plat map of the subject property,
Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

### **Objections**

9. Mr. Metz objected to Petitioner Exhibit 2 because the Board's decision was for the 2002 assessment year for a landlocked property in an unrelated area of Center Township. The objection goes to the weight of the exhibit rather than its admissibility and is overruled.

### **Burden**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).

12. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. Although there was some discrepancy as to the 2011 assessed value, Mr. Metz nonetheless agreed that the value increased by more than 5% and that Respondent had the burden.

### **Summary of Parties’ Contentions**

15. Respondent’s case:
  - a. Mr. Metz testified that the subject property is a buildable lot measuring 51 feet by 121 feet. He conducted some investigation into market sales in the Miller Beach area where the subject property is located, but the data was very limited. *Metz testimony.*
  - b. According to Mr. Metz, Petitioner’s appraiser made certain adjustments to the comparables in his appraisal that are inconsistent. He provided no explanation for those inconsistencies. *Metz testimony; Pet’r Ex. 1.*
  - c. Mr. Metz argued that the Board decision Petitioner presented is irrelevant because it is a 2002 case regarding a landlocked parcel in an unrelated area. *Metz testimony; Pet’r Ex. 2.*
  - d. Respondent is willing to agree to a value of \$16,700 for 2012. *Metz testimony.*
16. Petitioner’s case:
  - a. Petitioner contends the property is over-assessed. Petitioner submitted an appraisal prepared by Loray T. Robinson, a certified residential appraiser. The appraisal was prepared in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The appraiser estimated a value of \$12,600 as of March 1, 2012. *Gogolak testimony; Pet’r Ex. 1.*

- b. Petitioner argues that the property should receive a negative influence factor because it faces an alley rather than a street. In a 2002 Board decision regarding a landlocked property, a negative influence factor was applied. *Gogolak testimony; Pet'r Ex. 2.*

#### ANALYSIS

17. Respondent did not attempt to prove that the assessed value is correct. Respondent offered to reduce it, albeit not to the level Petitioner requested. Petitioner submitted evidence to support his requested value. The Board reaches this decision for the following reasons:
  - a. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to USPAP often will be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id; see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). ). The valuation date for the assessment at issue in this appeal was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f).
  - c. Respondent had the burden of proof. Respondent did not offer any evidence to prove that the assessed value for 2012 is correct. Instead, Respondent offered to reduce the assessment to \$16,700.
  - d. Petitioner, however, requested a lower value. Petitioner offered a USPAP compliant appraisal in which a certified residential appraiser valued the property at \$12,600 as of March 1, 2012. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Petitioner made a prima facie case for reducing the assessment to \$12,600.
  - e. Respondent contends that some of the appraiser’s adjustments are inconsistent. The appraiser explained that the comparable sale properties were adjusted by 10% for location and by 20% for view. It does appear that, in the case of comparable sale #2,

the adjustment should have been a negative \$1,500 rather than a positive \$1,500 for location and a negative \$3,000 rather than a negative \$5,000 for view. But the net result of correcting those errors would actually reduce the overall value of comparable sale #2. Consequently, despite these discrepancies, the appraiser made an otherwise adequate explanation of the adjustments and Respondent did not offer any alternative calculations. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 70 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Consequently, Petitioner provided sufficient evidence to make a prima facie case for a reduction in the assessed value to \$12,600 for 2012.

- f. When a taxpayer chooses to challenge an assessment, he must show that the assessor's value does not accurately reflect market value-in-use. The goal is to ascertain the property's market value-in-use. The absence of a negative influence factor focuses solely on the methodology by which the assessment was determined. Mr. Gogolak has not demonstrated that the application of a negative influence factor would more accurately reflect the property's market value-in-use. Furthermore, here the appraiser already applied adjustments to account for any inferior access to the property in arriving at Petitioner's requested value.
- g. The Board finds that the assessed value for the Warrick Street Property should be reduced to \$12,600 for 2012.

#### CONCLUSION

- 18. Respondent conceded the property was over-assessed and agreed to lower the assessment, but not to the level Petitioner requested. Petitioner made a case for a further reduction. Consequently, the Board finds for Petitioner.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012 assessment is changed to \$12,600.

ISSUED: December 19, 2017

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.